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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,003	03/17/2005	Kenneth Desilets	MCA-535D US	7437
25182	7590	05/05/2006	EXAMINER	
MILLIPORE CORPORATION 290 CONCORD ROAD BILLERICA, MA 01821			NAGPAUL, JYOTI	
			ART UNIT	PAPER NUMBER

1743

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/783,003

Applicant(s)

DESILETS ET AL.

Examiner

Jyoti Nagpaul

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24,29,30,32-35 and 37-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24,29,30,32-35 and 37-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Amendment filed on January 30, 2006 has been acknowledged. Claims 24, 29-30, 32-35 and 37-46 are pending.

#### ***Response to Amendment***

Rejection of Claims 25-28, 31 and 36 as being provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 6-7, 11-12, 16 and 22, respectively of copending Application No. 10/167250 has been withdrawn in light of applicant's terminal disclaimer.

Rejection of Claims 24-41 as being provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 and 5-27 pending Application No. 10/167250 has been withdrawn in light of applicant's terminal disclaimer.

#### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 24,29-30,32-35 and 37-46** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/167212. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application recites a multiwell filter plate having a multiplicity of wells, one or more first access holes, a multiplicity of second access holes in the filter plate and feeding plate having one well to accommodate the multiplicity of well of the filter plate. The copending application recites a multiwell filter plate having a multiplicity of first wells, a receiver plate having one or more well to accommodate the first wells of the filter plate, an access hole through the filter plate is positioned adjacent each of the first wells, and the number of second one or more wells of the receiving plate correspond in number and position of the first wells of the filter plate and wherein the second one or more wells each are sized to accommodate one the first wells. The copending applicant recites a receiver plate that is equivalent to the feeding plate of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. **Claims 24,29-30,32-35 and 37-46** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2,5-22,24-27 of copending Application No. 10/167250. Although the conflicting claims

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are not identical, they are not patentably distinct from each other because the instant application recites a multiwell filter plate having a multiplicity of wells, one or more first access holes, a multiplicity of second access holes in the filter plate and feeding plate having one well to accommodate the multiplicity of well of the filter plate. The copending application recites a multiwell filter plate having a multiplicity of well extending from a plate, a first access hole, the filter plate has a multiplicity of second access holes through the filter plate, and a second plate having one or more well to accommodate the first wells of the filter plate. The copending application recites a second plate that is equivalent to the feeding plate of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 30 and 32** are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

**Claims 30 and 32** recite the limitation "said walls" in Line 3. There is insufficient antecedent basis for this limitation in the claim.

**Claim 32** recites the limitation "support surface" in Line 2. There is insufficient antecedent basis for this limitation in the claim.

**Claim 32** recites the limitation "said first feeding plate" in 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 24, 32 and 37-38** are rejected under 35 U.S.C. 102(b) as being anticipated by Mathus (US 4927604).

Mathus teaches a multiwell filtration system. Mathus teaches a multiwell filter plate (40) having a multiplicity of wells extending from the plate, each of the wells (22) comprising (a) a hollow member having two openings and extending from the plate (40) and (b) a permeable barrier (25) secured about the lower opening. (See Figure 1-4) The system further teaches one or more access holes (166) for accessing a liquid in the feeding plate (150, 152, 154 and 156) and the feeding plate (150, 152, 154 and 156) having one well (the opening of the feeding plate is the one well/See Figure 4) to accommodate the multiplicity of wells of the filter plate (40). Mathus further teaches the feeding plate (150, 152, 154 and 156) includes a multiplicity of protrusions (200) extending from a support surface in a direction substantially the same as a direction of walls extend from said support surface, the protrusions (200) having a length which permits the walls to support the multiwell filter plate (40) and to permit contact of the protrusions with each membrane of a well of the filter plate (40) when the filter plate (40) is removed from support by the first feeding plate (40) and wherein the protrusions (200)

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are selected from the group consisting of posts, pyramids, rectangles, dimples and cones. (See Figure 4) The system further comprises a lid (180) for the filter plate (40).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. **Claims 29-30, 34 and 35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathus in view of Peltre (FR 2548685).

Refer above for the teachings of Mathus.

Mathus fails to teach a feeding plate having an inclined support surface having one or more drainage areas from which liquid can be removed and wherein the inclined support surface being inclined in a configuration to effect drainage of liquid from one or more introduction areas to the one or more drainage areas. Mathus fails to teach the feeding plate contains one or more baffles and the baffles have a shape selected from the group consisting of wavy elements, curvilinear elements, straight elements and crossed elements. Mathus also fails to teach the feeding plate comprises a plurality of support surface subsection each inclined from the walls to a drainage path connected to the support surface subsections.

Peltri teaches an apparatus for filtering multiple biological samples. The apparatus comprises a feeding plate (12) having an inclined support surface having one or more drainage areas (18) from which liquid can be removed and wherein the inclined support surface being inclined in a configuration to effect drainage of liquid from one or more introduction area (9) to the one or more drainage areas. Peltri further teaches the feeding plate (12) contains one or more baffles (20) and baffles having a shape selected from the group consisting of wavy elements, curvilinear elements, straight elements and crossed elements. (See Figure 7) Peltri further teach the feeding plate (12) comprises a plurality of support surface subsections/the section between the baffles (20) each



inclined from the walls to a drainage path connected to the support surface subsections.  
(See Figure 7)

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tray device of the primary reference of Mathus et al. such that the feeding plate has inclined support surface and one or more drainage areas and the feeding plate contains one or more baffles as taught by Peltri in order to increase the rigidity of the plate and collect the filtrate from the filter plate supported by the tray.

***Allowable Subject Matter***

12. Claims 33 and 39-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Prior art does not fairly suggest or teach one or more access hole formed in the filter plate are used for introducing and removing a liquid into and from the feeding plate. The feeding plate further comprising a series of second access holes in the filter plate located adjacent the wells for recovering liquid from the feeding plate.

***Response to Arguments***

Applicant's arguments with respect to claims 24, 29-30, 32-35 and 37-46 have been considered but are moot in view of the new ground(s) of rejection. Please refer above.

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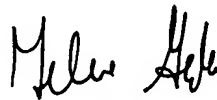
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN



**YELENA GAKH  
PRIMARY EXAMINER**